

FRIDAY UPDATE—FEBRUARY 25, 2005

*The weekly update of the activities of the Indiana General Assembly
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The final week of committee meetings in the chamber of origin is complete. Bills are now moving through the second and third reading processes. Below are reports on bills discussed this week.

If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at http://www.in.gov/serv/lsa_billinfo. You may access past issues of the Friday Update at <http://www.in.gov/judiciary/center/leg/index.html>.

Salaries & Benefits Alert: SB 363 concerning judicial salaries, the bill that would give judges a salary adjustment when state employees received one, was passed on third reading by a vote of 41-7. The House sponsors are Reps. Foley and Kuzman.

CIVIL LAW:

The Senate Judiciary Committee heard SB 132, authored by Sen. Zakas, concerning premises liability. This bill limits the duty owed to an invited guest on the premises of a nonprofit religious organization. Sen. Zakas explained that due to a change in case law, nonprofit religious organizations owed an increased duty of reasonable care to invitees; prior to this change, the organizations had a limited duty to warn of known dangers. Mr. Scott Wiggins, an insurer for religious organizations, testified in support of the bill explaining that under the reasonable care standard, churches have no incentive to keep their property available for public uses, when they face the risk of being named in a lawsuit and having to become involved in extended litigation because the issue of "reasonable care" cannot be judicially resolved.

Sen. Bray and other members of the committee voiced concern about whether the duty to warn of known dangers should only apply to premises' used primarily for worship services, noting that many churches have schools and attached buildings used for social functions. To resolve these concerns, an amendment was introduced limiting the duty owed to persons entering property "used primarily for worship services." Sen. Steele also introduced an amendment to expand the definition of "nonprofit religious organization" to include churches who are recognized as nonprofit organizations by the IRS, but not incorporated. The committee adopted the amendments and voted do pass 11-0.

CRIMINAL LAW:

The Senate Corrections, Criminal and Civil Matters Committee heard SB 96 concerning bifurcated sentencing. Sen. Long, author, explained that the bill was drafted by the Sentencing Policy Study Committee to accommodate Indiana sentencing procedures to a Sixth Amendment jury trial right. He said he had held the bill back as

long as possible to see what the Indiana Supreme Court will decide must be done with our statutes to comply with the *Blakely v. Washington* holding. Larry Landis, Public Defender Council and member of the Sentencing Policy Study Committee, further explained the bill. Sen. Long and Mr. Landis explained that the bill would require notice by the prosecutor of the aggravating factors on which the State intends to rely for an enhanced sentence and then have a quick post-conviction jury trial on the alleged aggravators, much like an habitual offender jury trial. They also explained that the statutory aggravating factor list had been condensed, by removing a number of aggravators, which have been inserted over the years into offense definitions as grounds for higher class of felony (within 1000 feet of a school in drug offenses was cited as an example of the factors eliminated). Most of the committee discussion was a vagueness criticism of the bill's first aggravating factor. Sen. Long and Mr. Landis explained this factor is a jury-triable version of the present aggravator for the nature and circumstances of the crime. The bill passed by unanimous vote.

The Senate Corrections, Criminal and Civil Matters Committee also heard SB 124 allowing credit time for pretrial home detention, presented by author Sen. Paul. Larry Landis of the Public Defender Council spoke for the bill. Steve Johnson of the Prosecuting Attorneys Council expressed concern that with credit for pretrial home detention, offenders will be released from jail sooner. Due to this opposition and to a consensus that home detention was not the equivalent of in-jail pretrial detention, the bill was amended by consent to allow only "Class II" credit (one day credit for every two days served) for pretrial home detention. As amended, the bill passed 9-0.

The Senate Corrections, Criminal and Civil Matters Committee heard SB 525 on life without parole for repeat A or B felony child sex crimes, presented by Sen. Zakas. Some members questioned whether life without parole was an appropriate sentence for certain B felony sex crimes. Steve Johnson of the Prosecuting Attorneys Council distributed an analysis of the offenses, which would be affected, most of which already received enhanced penalties. Larry Landis of the Public Defender Council pointed out that there is no "credit time" incentive for life without parole offenders to observe prison rules, and observed that it would be better to give them 100 year sentences. Committee members asked about civil commitments for sex offenders, an approach, which Sen. Zakas observed, had been taken in some unsuccessful bills he had introduced in past years. An amendment limiting the life without parole to A felonies only was proposed, which the legislative aid pointed out would limit the life sentence to the most serious rape, criminal deviate conduct, and child molesting crimes. The amendment passed by consent, and the bill passed 8 to 1.

The House Courts and Criminal Code Committee considered HB 1055, which creates a pre-trial services fee for offenders who are supervised by the probation department while awaiting trial. The Porter County judges brought the need for the bill to the attention of their representative. The committee heard supporting testimony from Judge David Chidester of Porter Superior Court and Neil Hannon, Chief Probation Officer for Porter County Adult Probation. Judge Chidester explained that the fee would apply in situations where a judge determines that the defendant needs supervision while

out of jail and on bond, waiting for trial. Judge Chidester also explained that the fee would not apply to every defendant waiting for trial, and that judges would have discretion to waive the fee for indigent defendants. The American Surety Company opposed the bill on behalf of bail bonding companies. The bill passed 7-4.

The House Courts and Criminal Code Committee considered HB 1735 on victim notification. The bill as originally drafted would create an automated victim notification system within the Attorney General's office. The victim would register to be notified of certain events or status changes related to the offender, and then would be notified by telephone when the events occur. The committee amended the bill to transfer the system to the Department of Correction, which already has a victim/witness coordinator. DOC supports the bill and stated it will seek federal grants to fund the system. The Indiana Sheriffs Association also supported the bill. Sheriffs will be responsible for entering the victim data into the database system. The bill passed as amended 11-0.

FAMILY & JUVENILE LAW:

The Senate Tax and Fiscal Policy Committee heard SB 529, concerning the reorganization of the Department of Child Services. Sen. Connie Lawson, author, introduced two amendments. The first amendment created a committee to study the organization of child services and make recommendations concerning the proper agency to administer each child services program. The second amendment was bolder and much more extensive.

It permits the Department of Child Services to require a county to grant their request for an excess tax levy for the Family and Children's Fund and the Children's Psychiatric Residential Treatment Fund, and removes the maximum levy for both funds. It provides the Department of Child Services, with the assistance of juvenile court judges, will provide the budget to establish the tax levy for both of these funds to pay for child services.

Judge Payne, Director, Department of Child Services, noted 29 counties had excess levy requests this year and 41 are projected for next year. Sen. Kenley said this is too many. In addition, it permits the Department of Child Services to serve as the purchasing agent for child services for multiple counties. The amendment also "cleans up" the Children's Residential Psychiatric Treatment Fund and indicates any balances left after distributions do not revert to the county general fund. In addition, it requires reporting of the department's progress in recruiting, training, and retaining caseworkers. It establishes a Division of Family Resources and Department of Child Services to replace the Division of Family and Children. Cathy Graham, IARCCA, spoke in favor of the bill. Sen. Hume questioned the provisions removing the limit on the tax levies. Sen. Kenley noted present law requires the county to fund children's services. The St. Joseph Chamber of Commerce and Farm Bureau spoke against the legislation. The bill passed as amended 6-3.

The Senate Judiciary Committee heard SB 639, authored by Sens. Hume and Bray, concerning interest on delinquent child support. Sen. Hume explained that the purpose of this bill is to provide an incentive for delinquent child support obligors to pay delinquent child support owed up front, rather than attaching an additional amount to the original child support payment. In its original form, the bill authorized the court to order and attach interest charges to delinquent child support payments at least equivalent to 2% above the prevailing prime bank-lending rate. Sen. Steele voiced concern about potential confusion in determining which prime rate to use, and an amendment was introduced to change the interest rate to the equivalent rate for a final judgment (currently 6% annually per IC 34-54-8-5) on the date a child support order is issued. The committee adopted the amendment and voted do pass 8-0.

The Family, Children and Human Affairs Committee heard HB 1743, about child caseworker caseload ratios after extensive testimony and a subcommittee discussion last week. Rep. Budak, author, offered an amendment, which was adopted by consent. It requires submission of a report every three (3) months, rather than the current six (6) months, on the caseloads of child protection workers to the legislative council, rather than the general assembly. The same amendment required a report to the legislative council and the health finance commission statistics on the education levels and salaries of all caseworkers and supervisors by September 1, 2005. The amendment also changed the effective date for the caseload levels of 12 active investigations per month to July 1, 2008. This would permit the budget proposed by the governor adding new caseworkers to be phased in. The bill passed as amended 8-0.

JUDICIAL ADMINISTRATION:

The Senate Judiciary Committee heard SJR 1, authored by Sen. M. Young, concerning selection of justices and appellate court judges. This resolution would amend Article 7 of the Indiana Constitution by renaming the judicial nominating commission as the "commission on judicial nominations and qualifications" and reconstructing its membership.

Specifically, the resolution provides that the commission be comprised of: the chief justice or his/her designee as chair; one member selected by attorneys licensed in Indiana; one member appointed by the speaker of the house of representatives; one member appointed by the president pro tem; and requiring that one of the three members appointed by the governor must be an attorney. The resolution also allows the governor to fill a vacancy on the supreme court or court of appeals from nominees recommended by the commission, subject to confirmation by the senate.

In its introduced form, the resolution also required appellate court judges to be elected into office. Sen. M. Young felt that the current retention vote process was ineffective for ensuring appellate judge accountability and that by allowing public and legislative oversight, the public would be assured that its judges were qualified. Judge Baker of the Court of Appeals testified against the bill and explained the history and benefits of the current merit selection process and potential problems associated with

requiring judges to run election campaigns. The president-elect of the Indiana State Bar Association, and the president of the Indianapolis Bar Association, both testified in opposition to the resolution as an improper attempt to politicize the process and discourage judicial independent decision-making.

After much debate and discussion by all members of the committee, an amendment was introduced that replaced the election requirement and included a confirmation process. The amendment specifies that justices of the supreme court and judges of the court of appeals must be reconfirmed by the senate every tenth year after their initial appointment confirmation.

In order to serve an additional term, the resolution requires justices or judges to apply to the senate for retention and specifies that a justice or judge will be retained, unless 1) the judge or justice does not apply to the senate for retention, and 2) at least 60% of the members of the senate vote against retention. The resolution provides a transition for justices and judges serving at the time the amendments are adopted, and clarifies the impeachment proceedings for a justice or judge. The committee adopted the amendment and voted do pass.